

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 17

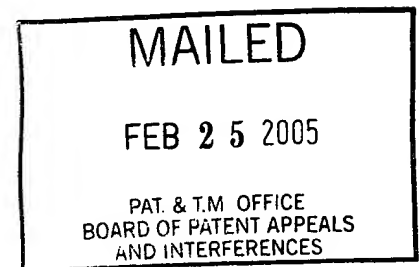
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte ALEXANDER ERIK MERICAS

Appeal No. 2005-0136
Application No. 09/310,912

ON BRIEF



Before CRAWFORD, GROSS, and MACDONALD, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 17
which are all of the claims pending in this application.

The appellant's invention relates to a method of monitoring events within a data processing system comprising a speculative processor (specification, p. 4). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Dollin et al. (Dollin)	6,112,236	Aug. 29, 2000 (filed Nov. 21, 1996)
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The rejections

Claims 1, 3, 4, 6 to 10, 12 and 14 to 17 stand rejected under 35 U.S.C. § 102 as being anticipated by Dollin.

Claims 2, 5, 11 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dollin.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 9 , mailed November 5, 2002) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 8, filed August 14, 2002) and reply brief (Paper No. 10 , filed December 24, 2002) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The examiner has rejected claims 1, 3, 4, 6 to 10, 12 and 14 to 17 under 35 U.S.C. § 102 as being anticipated by Dollin.

The appellant's invention is a method of monitoring events within a data processing system comprising a speculative processor which may execute a certain instruction, out of turn, based on a prediction of a condition occurring. The results of these speculatively executed instructions are stored in a virtual register and are only later written to a physical register when the condition occurs and it is determined that the prediction is correct. If the condition does not occur, the instructions are flushed and never written into the physical registers. The appellant's invention, as recited in claim 1, generates a count for all events executed by the speculative processor (those that are completed and those that are flushed) and generates a count of all events completely executed by the speculative processor (specification pages 1-3, and 14).

Dollin discloses a method for measuring the quality of service provided by a connection in transferring data units between first and second points in a network (col. 1, lines 6 to 9). The Dollin method tracks data of the existing traffic by detecting the

data at a first point and attempting to detect the data at a second point (col. 3, lines 13 to 16). Dollin's method provides a count of inserted, lost, and corrupted data between first and second points in a network (col. 5, lines 41 to 46).

The examiner is of the opinion that a speculative processor is inherent in a system for monitoring events as disclosed in Dollin (Paper No. 4). We do not agree.


As noted above, a speculative processor processes instructions before the condition precedent to the instruction has occurred. If the condition never occurs, the data processed speculatively is discarded. In our view, speculatively executing instruction is not the same as monitoring events. There is nothing in Dollin which relates to a speculative processor. Therefore, we will not sustain the rejection under 35 U.S.C. § 102 of claim 1. We will also not sustain this rejection as it is directed to claims 2, 4, 6 to 10, 12 and 14 to 17 because each of these claims includes either a speculative processor or the step of speculatively executing instructions.

We turn next to the examiner's rejection of claims 2, 5, 11 and 13 under 35 U.S.C. § 103 over Dollin. The Dollin disclosure is not related to a speculative processor and thus does not suggest a speculative processor. Each of the above referenced claims includes the subject matter of a speculative processor or a step of speculatively

The decision of the examiner to reject claims 1, 3, 4, 6 to 10, 12 and 14 to 17 under 35 U.S.C. § 102 and claims 2, 5, 11 and 13 under 35 U.S.C. § 103 is reversed.

MURRIEL E. CRAWFORD
Administrative Patent Judge

) BOARD OF PATENT
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) AND
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ALLEN R. MACDONALD
Administrative Patent Judge

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